International Seabed Authority

ISBA/18/LTC/3

Legal and Technical Commission

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Kingston, Jamaica
16-27 July 2012

Report on informal consultations between contractors and the Secretariat, Kingston, 9-11 January 2012

Note by the Secretariat

1. Regulation 31 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area requires contractors with the Authority to gather environmental baseline data and to establish environmental baselines, and to report annually on these activities. The annual reports are reviewed each year by the Legal and Technical Commission.

2. In the summary report of the Chair of the Legal and Technical Commission on the work of the Commission at its seventeenth session (ISBA/17/C/13), it was noted that there was an urgent need for the Authority to update its data management requirements with regard to acceptable data format(s) for submission to the secretariat of scientific and technical data collected by contractors. Following its consideration of the views expressed by the Commission, the Council of the International Seabed Authority issued a decision with regard to the provision of data and information contractors (ISBA/17/C/20), in which it called upon contractors to provide raw data in digital format for inclusion in the database of the Authority, in accordance with regulation 31, paragraphs 4 and 5, of the Nodules Regulations and with regulation 34 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides. In addition, in relation to its consideration of the proposed environmental management plan for the Clarion-Clipperton Zone, the Council requested the Secretary-General to convene a meeting, prior to the eighteenth session, to address, inter alia, the availability of data that could be used to assess the plan.

3. In order to address the requests by the Council, the Secretary-General decided to convene an informal meeting with all current contractors. The meeting took place from 9 to 11 January 2012 and was attended by representatives, including environmental experts, of all current contractors with the Authority.

4. The meeting began with a series of presentations on the current status of environmental data that had been provided to the Authority and the status of relevant publicly available data, and the need for standardization. Those

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presentations were followed by presentations from each contractor outlining the current status of data that had been collected and identification of future activities. Once all of the presentations had been completed there was a discussion in plenary in order to create a standard template for raw data submission. In addition to the provision of raw data, it was decided that metadata sheets should be provided. Such sheets would summarize the raw data that was being provided with the annual reports and would be published on the Authority's website at the earliest opportunity to allow all members of the Authority and the public in general to see what data was being collected by contractors without needing to make the raw data immediately available to the wider community should contractors wish to publish their results in scientific journals before publicly releasing the raw data. Identification of data and information that was being collected by contractors and stored by the Authority identified opportunities for collaboration and allowed the Authority to fulfil its mandate according to article 143 of the United Nations Convention on the Law of the Sea, regarding the promotion and encouragement of marine scientific research, and the dissemination of the results of such work.

5. The meeting agreed on the format and content of templates for raw data sheets and metadata sheets. However, it was noted that there was additional expertise outside the meeting that the contractors relied upon and therefore it was decided to distribute the draft templates to all participants after the meeting for further consideration. Subsequently, the feedback obtained was incorporated into the draft templates and the agreed finalized templates were distributed to all contractors. It is expected that all future data will be provided using these templates.

6. One of the requirements reinforced at the meeting was the need for taxonomic standardization. It was decided that the best method to address that need would be through taxonomic standardization workshops. The aim of the workshops would be to bring together those performing the taxonomic identifications for contractors with the leading experts in the relevant fields in order to create standardized keys to enable all contractors to use the same nomenclature and make possible the amalgamation of datasets from each contractor. Standardization is required in order to, inter alia, evaluate regional biodiversity and species ranges and to provide essential information that could be used to validate the environmental management plan for the Clarion-Clipperton Zone. The secretariat is currently negotiating with interested researchers with a view to organizing a series of taxonomic standardization workshops.

7. In light of the request by the Council, some contractors provided additional data prior to the meeting and all contractors agreed to assess their inventories for raw data and to provide it, together with all data collected in the future, to the Authority in a standardized electronic format. The secretariat is in the process of reviewing and assimilating this data and will report on it, and its potential use for evaluating the environmental management plan for the Clarion-Clipperton Zone, in due course.

8. It was noted by all participants that the meeting was the first time that all of the contractors had met with one another and the secretariat in the same room, and that the format had allowed for open and frank discussions to the benefit of all. It was therefore proposed that that activity be repeated on a regular basis, with the topics for discussion to be decided on the basis of the needs of the contractors and the Authority.

I. Future workplan

9. The meeting agreed that contractors should carry out the following activities:

(a) Raw data should be provided electronically with annual reports for all future activities using the agreed raw data templates that have been provided to contractors;

(b) Metadata identifying the type of environmental data collected during a reporting year should be included in the annual reports. The template to be used has been provided to contractors;

(c) Where contractors have collected data during past activities, but such data has not been provided to the Authority, contractors are encouraged to collate the information and provide it using the agreed raw data templates accompanied by the relevant metadata sheets.

10. In order to provide support for the core functions of the secretariat to maintain databases and enable sufficient protection of the marine environment from impacts that may arise as a result of mineral-related activities in the Area, the meeting agreed that the following work will need to be carried out:

(a) A review of the data provided by contractors as a result of the requests prior to and during the meeting, and a review of the status of environmental information for the Clarion-Clipperton Zone and Indian Ocean exploration should be carried out;

(b) The environmental database will be redesigned to accommodate the new data format and archive data will be transposed to the new database;

(c) Metadata sheets will be integrated within an online geographic information system to enable identification of data that has been collected within the contractor areas. This effort will also enable the Authority to fulfil its role to promote and encourage marine scientific research and international collaboration within the Area;

(d) Taxonomic standardization workshops will be held in order to create consistent identifications of species by contractors so that a homogenized database can be created to enable more efficient protection of the marine fauna of the Area;

(e) Once all the collected data have been assimilated and standardized, an evaluation of the environmental management plan will be carried out and new recommendations will be issued, if appropriate.

11. Certain of these activities will need to be performed by the secretariat; others may require external consultants. It should be noted, however, that there is currently no provision for the activities to be funded from within the current budget of the Authority. Additional resources will be needed to implement the work programme recommended by the meeting. Nevertheless, some of the coordination activities recommended by the meeting overlap with activities being carried out by other entities, including such scientific groups as the International Network for Scientific Investigation of Deep-sea Ecosystems (INDEEP). It is therefore proposed that the Authority continue to develop scientific collaborations with appropriate groups and organizations in order to advance the understanding of topics relevant to the

protection of the marine ecosystems from activities associated with mineral activities in the Area.

II. Recommendation

12. The Legal and Technical Commission is invited to take note of the outcomes and recommendations from the informal consultations with contractors. The Commission is also invited to provide comments and advice on the plan of activities proposed by the meeting, in particular as to how such activities could be funded.

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Report on the International Workshop on Environmental Management Needs for Exploration and Exploitation of Deep Sea Minerals

Note by the Secretariat

1. The International Seabed Authority, in collaboration with the Government of Fiji and the Applied Geoscience and Technology Division of the Secretariat of the Pacific Community, held a workshop on environmental management needs for exploration and exploitation of deep sea minerals, in Nadi, Fiji, from 29 November to 2 December 2011. This initiative reflected the increasing interest in and associated concerns about the potential environmental impacts of deep sea minerals exploration and mining and how competent authorities at the national and international level will regulate this emerging economic development opportunity in a sustainable manner in areas within and beyond national jurisdiction. The workshop was organized to raise awareness of the nature of the mineral resources found in the seabed in the Area and on the outer continental shelf. Another objective of the meeting was to assess the measures taken by the Authority with respect to the protection of the marine environment from the harmful effects of deep seabed mining and the applicability of such measures to the development of marine minerals in areas within national jurisdiction. The outputs from the workshop included a draft template for an environmental impact assessment of seabed mining; an outline of the legislative and regulatory provisions that should form the basis of environmental management of deep seabed mining; and the identification of capacity-building needs and methods by which those needs could be addressed.

2. The workshop was attended by 79 participants from 18 countries and involved a series of presentations, available on the Authority's website (www.isa.org.jm), followed by discussions in three working groups to address specific topics.

3. The first working group was tasked with preparing an environmental impact assessment template that could be used in the first instance by exploration contractors when carrying out activities requiring such an assessment, while ensuring that the template was broad enough to be applicable to the exploitation phase of deep seabed mining. The template was also designed to provide assistance

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to developing States when preparing their own regulatory regimes for seabed activities within national jurisdiction, including but not restricted to seabed mineral exploration and exploitation. While not conclusive, it is designed to stand as a template that can be adapted as appropriate depending on the situation.

4. The second working group addressed the legislative and regulatory provisions that should form the basis of environmental management of deep seabed mining activities in areas within and beyond international jurisdiction. While the international legislative regime for mineral exploration beyond national jurisdiction is well established through the activities of the Authority, work is only just beginning on the development of regulations addressing exploitation. To date, there have been no precedents for national legislation to govern the relationship between sponsoring States and sponsored contractors in the Area, despite such legislation being a requirement of sponsoring States that was highlighted by the advisory opinion issued in February 2011 by the Seabed Disputes Chamber of the International Tribunal on the Law of the Sea. There has also recently been increased interest in marine mineral exploitation within the national jurisdiction of various countries, particularly among Pacific island countries that had expressed a need to develop national regulatory frameworks for this purpose. The working group decided that it was not appropriate to draft a detailed legislative model for the regulation of deep seabed mining but that it would be more helpful to identify key legislation and international obligations that should be considered by States when discussing both the development of the exploitation code for minerals beyond national jurisdiction and their national legislation.

5. The third working group focused on identifying the capacity-building needs associated with seabed mining, particularly those related to environmental impact assessment. The group noted that the current level of technical, human and financial capacity impinged upon the ability of developing countries to engage in seabed mining and evaluate the potential impact of such activities, both within national jurisdiction and in the Area. The working group identified a series of activities that could help to address the capacity-building requirements of developing States.

6. The full workshop report is published as International Seabed Authority Technical Study No. 10. The workshop report contains a template for an environmental impact assessment, a list of legal issues to consider when preparing the environmental aspects of an exploitation code and the capacity-building needs that should be addressed.

7. The Legal and Technical Commission is invited to take note of the workshop report and provide any comments on the recommendations of the working groups and how those recommendations may feed into the future activities of the Legal and Technical Commission and the Council.

International Seabed Authority ISBA/18/LTC/5

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Proposed amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area

Note by the secretariat

I. Introduction

1. At its meeting in 2011, the Council of the International Seabed Authority endorsed the recommendation of the Legal and Technical Commission to amend the current Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (Nodules Regulations), as approved by the Assembly of the International Seabed Authority on 13 July 2000, in order to bring them into line with the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (Sulphides Regulations), as approved by the Assembly on 7 May 2010.

2. In order to facilitate the consideration by the Commission of the proposed amendments to the Nodules Regulations, the secretariat has prepared an informal document (ISBA/18/LTC/CRP.1) showing the revisions that would be necessary to align the Nodules Regulations with the Sulphides Regulations.

II. Proposed amendments

3. The main thematic areas requiring revision are described in the following paragraphs. In addition, a number of minor technical amendments will be required, which are highlighted in document ISBA/18/LTC/CRP.1.

4. The Nodules Regulations include a number of provisions, contained mainly in footnotes, that describe how the Regulations shall be applied to registered pioneer investors, taking into account the special regime applicable to them under resolution II of the Third United Nations Conference on the Law of the Sea and the provisions of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. Because all the former registered pioneer investors are now contractors with the Authority, the footnotes are no longer required and it is recommended that they be deleted.

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5. The main differences between the Nodules Regulations and the Sulphides Regulations are in the sections dealing with the protection and preservation of the marine environment. Substantive revisions are therefore proposed to part II (prospecting) and part V (protection and preservation of the marine environment), as well as the corresponding provisions in annexes II and IV.

6. The prescribed fee for applications under the Nodules Regulations is $250,000. This amount was initially prescribed for the purposes of consistency with the Agreement (annex, sect. 8, para. 3), which reflected the fee payable for registration as a pioneer investor that was fixed in 1982 by resolution II. In adopting the Sulphides Regulations, the Council considered it necessary to increase the amount of the fee to $500,000 to reflect the changes in the value of money since 1982 as well as to take into account the actual costs of processing applications. In a separate report to the Council on the status of fees paid by applicants for contracts in 2011, the Secretary-General noted that the actual costs of processing exceeded $250,000 (see ISBA/18/C/3). Consequently, it is recommended that the Commission review the fee specified in regulation 19 of the Nodules Regulations to bring it into line with the Sulphides Regulations. It will be recalled that the Sulphides Regulations also make provision for a variable fee, based on the number of exploration blocks held by the contractor at any one time. In the light of the fact that the block system does not apply to polymetallic nodules, the Commission may consider it unnecessary to introduce a variable fee system in this case.

7. A further significant difference between the Nodules Regulations and the Sulphides Regulations is that the latter contains a review clause (part X, regulation 42). It is suggested that a similar clause be inserted into the Nodules Regulations.

III. Entry into force and effect of amendments on existing and new contracts

8. Any amendments to the Nodules Regulations would enter into force on a provisional basis on the date of adoption by the Council, unless the Council specifies a different date. The Regulations enter into full force on the date of their approval by the Assembly.

9. In the case of existing contracts for exploration, section 24.2 of the Standard Clauses (annex 4 to the Regulations) states that the contract may be revised by agreement between the Contractor and the Authority "to facilitate the application of any rules, regulations and procedures adopted by the Authority subsequent to the entry into force of [the] contract". This suggests that, following adoption of the amended Regulations, it would be necessary for the Secretary-General to consult with each of the existing contractors with a view to making necessary revisions to the standard terms of contracts.

10. In cases in which applications have been submitted prior to entry into force of amendments but contracts have not been drawn up, the Commission may wish to propose to the Council that, when adopting the amended Nodules Regulations, it request the Secretary-General and the applicant to consult prior to the signature of the contract with a view to incorporating any necessary revisions into the contract.

IV. Recommendation

11. The Commission is invited to review the proposed revisions to the Nodules Regulations, as shown in document ISBA/18/LTC/CRP.1, with a view to making a proposal to the Council for adoption during its eighteenth session.